IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

KEURIG, INCORPORATED, Plaintiff, v. KRAFT FOODS GLOBAL, INC., TASSIMO CORPORATION, and KRAFT FOODS INC., Defendants.	Civil Action No. 07-017-GMS **REDACTED – PUBLIC VERSION**

REPLY IN SUPPORT OF KEURIG'S MOTION *IN LIMINE* NO. 2

John W. Shaw (No. 3362)
jshaw@ycst.com
Karen E. Keller (No. 4489)
kkeller@ycst.com
YOUNG CONAWAY STARGATT & TAYLOR, LLP
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, DE 19801
(302) 571-6600

Michael A. Albert
Michael N. Rader
WOLF, GREENFIELD & SACKS, P.C.
600 Atlantic Ave.
Boston, MA 02210
(617) 646-8000

Attorneys for Plaintiff Keurig, Incorporated

Dated: August 25, 2008

Testimony from Kraft's technical expert Malcolm Taylor about Kraft's employees' own litigation-driven experiments would be improper under Fed. R. Evid. 702 and 703. Mr. Taylor, who is supposed to be a neutral expert applying sound engineering standards to his engagement in this case, was not present when the experiments were performed, did not speak to the engineers who performed them, and never even saw the test apparatus. Testimony cited in Kraft's opposition only confirms that Mr. Taylor was confused about what Kraft's engineers actually did and would never have relied on their data in his professional work as an engineer.

Kraft's suggestion that Mr. Taylor may nevertheless rely on the Kraft experiments as "confirmation" of his own tests invites legal error. An independent expert is not allowed to lend his credibility to tests performed by a party's own employees for litigation purposes.

I. Mr. Taylor Did Not Even Understand the Kraft Engineers' Testing.

Kraft tries to downplay Mr. Taylor's confusion about the Kraft employees' testing. The testimony that Kraft cites, however, only confirms that Mr. Taylor's understanding of that testing is sorely deficient. For example, in the excerpt on page 2 of Kraft's opposition, Mr. Taylor testified that the experiments reflected in Deposition Ex. 13 (Mot. Ex. 3) involved [redacted] Mr. Taylor is confused. [redacted]

Kraft attempts to deflect Mr. Taylor's ignorance about [redacted]

[1] Keurig's opening brief included Exs. 1-8. Exhibits to this brief begin at Ex. 9.

In response to Mr. Taylor's confusion over which Kraft engineer did the tests reflected in Deposition Ex. 13 (Mot. Ex. 3), Kraft contends that "it is not clear" which of the test results (Mot. Exs. 3-5) was the subject of the question "Who created this document?" Yet the eleven preceding questions all concerned Deposition Ex. 13 alone.[2] (Ex. 10 at 116-118).[3]

II. Mr. Taylor's Reliance on the Kraft Engineers' Testing Is Unreasonable.

Kraft attempts to sidestep Mr. Taylor's testimony concerning sound engineering practices (such as receiving all relevant information and meeting other engineers to discuss their results) with a semantic argument that these practices apply only to "designing packages" and not to "testing" them. (Opp. at 3). But Mr. Taylor himself rejected this suggestion:

> Q: So if somebody working under you was testing a prototype or a product, you'd expect to get all the reports[4] that they generated about that testing?
>
> A: Yes, or I'd go and look at it myself.
>
> Q: If you had hired an outside company to do some testing of a product or prototype, would you expect to have the opportunity to speak to them directly about their results?
>
> A: Absolutely. You would work with them on a day-to-day basis, even to go over there to visit with them. Absolutely.

(Ex. 10 at 45-46) (emphasis added).

On the merits, Kraft does not even attempt to suggest that Mr. Taylor's work in this case satisfies such standards as required for his testimony to pass muster under Rules 702 and 703. See Cummins v. Lyle Industries, 93 F.3d 362, 369-72 (7th Cir. 1996) (expert witnesses must "adhere to the same standards of intellectual rigor" required in their professional work).

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[2] [redacted]

[4] Kraft withheld Mr. Bentley's report from Mr. Taylor as well as Keurig. (Mot. at 1).

III. Rules 702 and 703 Do Not Allow Mr. Taylor to Testify that Kraft's Own Tests "Confirm" His Independent Opinion.

Kraft argues (without authority) that Mr. Taylor can testify about the Kraft tests because he considered them "merely to confirm his own" results. (Opp. at 5). To the contrary, Rules 702 and 703 do not permit an expert to package another's analysis as a "confirmation" of his or her own opinion. Mike's Train House, Inc. v. Lionel, LLC, 472 F.3d 398, 409 (6th Cir. 2006) (following the "[o]ther circuits [that] have squarely rejected any argument that Rule 703 extends so far as to allow an expert to testify about the conclusions of other experts"); United States v. Cuong, 18 F.3d 1132, 1143 (4th Cir. 1994) (error to permit expert "to bolster his opinion evidence by testifying that his conclusions…were 'essentially the same' as those of" another).

Kraft tries to distinguish these cases by arguing that Mr. Taylor may rely on the Kraft engineers' "data" so long as he does not reference their "conclusions." (Opp. at 5 n.3). This argument too is bare semantics – Mr. Taylor's expert report focuses on the substance of what the Kraft tests supposedly "establish" about the alleged prior art. (Mot. Ex. 1 at 8).

Kraft's engineers designed and conducted tests intended to support Kraft in this case. (Kraft even asserts work product protection as to the report its engineer wrote about the tests.) Kraft wants to put its litigation-driven tests into evidence through its supposedly neutral expert – who did not even understand them, and whose own testing was limited to a "couple of minutes" "messing around in the kitchen." (Ex. 10 at 99, 107). In essence, Kraft wants its own tests to be "dressed up to look like expert testimony." Hot Wax, Inc. v. Warsaw Chem. Co., 45 F. Supp. 2d 635, 639 (N.D. Ill. 1999). This strategy is unfair and contrary to the rules of evidence.[5]

[5] The three sets of tests results (Mot. Exs. 3-5) about which Mr. Taylor proposes to testify are classic hearsay. The appearance of Kraft's engineers at trial (Opp. at 1 n.1) will not change this. Mr. Taylor may not disclose these hearsay exhibits to the jury because their probative value fails to substantially outweigh their prejudicial effect. Rule 703. (Mot. at 5). Kraft has no answer.

YOUNG CONAWAY STARGATT & TAYLOR, LLP

John W. Shaw (No. 3362)
jshaw@ycst.com
Karen E. Keller (No. 4489)
kkeller@ycst.com
YOUNG CONAWAY STARGATT & TAYLOR, LLP
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, DE 19801
(302) 571-6600

Michael A. Albert
Michael N. Rader
WOLF, GREENFIELD & SACKS, P.C.
600 Atlantic Ave.
Boston, MA 02210
(617) 646-8000

Attorneys for Plaintiff Keurig, Incorporated

Dated: August 25, 2008

CERTIFICATE OF SERVICE

I, Karen E. Keller, Esquire, hereby certify that on September 2, 2008, a true and correct copy of the foregoing document was electronically filed with the Clerk of the Court using CM/ECF which will send notification that such filing is available for viewing and downloading to the following counsel of record:

Richard L. Horwitz, Esquire [*rhorwitz@potteranderson.com*]
David E. Moore, Esquire [*dmoore@potteranderson.com*]
Potter Anderson & Corroon LLP
Hercules Plaza
1313 North Market Street, 6th Floor
Wilmington, Delaware 19801

Additionally, I hereby certify that on September 2, 2008, copies of the foregoing document were served by e-mail on the above-listed counsel of record and on the following non-registered participants in the manner indicated below:

BY E-MAIL

David Schlitz, Esquire [*david.schlitz@bakerbotts.com*]
Baker Botts L.L.P
The Warner
1299 Pennsylvania Ave., NW
Washington, D.C. 20004-2400

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ *Karen E. Keller*
John W. Shaw (No 3362) [*jshaw@ycst.com*]
Adam W. Poff (No. 3990) [*apoff@ycst.com*]
Karen E. Keller (No. 4489) [*kkeller@ycst.com*]
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, DE 19801
(302)-571-6600

Attorneys for Plaintiff Keurig, Incorporated

EXHIBIT 9

THIS EXHIBIT HAS BEEN REDACTED IN ITS ENTIRETY

EXHIBIT 10

In The Matter Of:

KEURIG, INCORPORATEDv.
KRAFT FOODS GLOBAL, INC

MALCOLM E. TAYLOR
July 3, 2008

MERRILL LEGAL SOLUTIONS
101 Arch Street, 3rd Floor
Boston, MA 02110
PH: 617-542-0300 / FAX: 617-338-6075

TAYLOR, MALCOLM E. - Vol. 1

Page 42

Q. How does that work? Is it through meetings or memos or what?
A. Meetings, e-mails, memos, personal one-to-one, all depending on the urgency or importance of the aspect that you are looking into, and sometimes you have to work with a company on the outside, you know, a supplier of materials.
Q. In your experience as lead engineer, did you have people working under you that prototyped devices for you?
A. Yes.
Q. How would you evaluate the effectiveness of that prototyping?
A. Well, depending on the level of prototyping, if it was fairly involved, you might work with a machine company who would ultimately make an automatic machine which would assemble each of the elements in the package, and he would work with you on the development basis or if it's a fairly simple package where you could easily make up a model in the lab, then you do it in-house. That would all depend on the complexity and all the rest of it.
Q. So in good engineering practice, does the lead engineer himself examine the prototype or can you

Page 43

just rely on the people under you?
A. No. He would be involved at every step along the way.
Q. So you would personally examine the prototype to see how it worked?
A. Because you are developing it, you want to make sure that all the objectives that you are looking at in the design specification are being met. It's okay to have a rough design where you are doing a test rig and, you know, you have a leak here and a leak there. It isn't important. You are looking at the overall concept to make sure the overall concept is working, then as you move along you develop other issues in the process of whatever else you are developing.
Q. Do you sometimes get memos from people on the team or from outside consultants or vendors about different parts of the project?
A. Once in a while if you are working in an area where you would need a consultant then you might have to hire one, but if it's within our own area of expertise, obviously we wouldn't.
Q. But in terms of the work product that goes in along the way in these projects, how does that work? Do

Page 44

people write up memos or logbooks about the --
A. Yes, yes, yes. I'm sorry. You do have a logbook that you update every -- usually at the end of the day so you know what you've done. If you didn't, you wouldn't have any reliable data at all because as you develop you may have to back up and you may have to go in a different route if you are up against a block somewhere.
Q. Are there standards for good engineering practice about how much detail you need in those logs or memos?
A. No, not really. It really depends on what your objectives are and how rapidly the whole thing is moving along. You would have timelines all depending on how large the program is altogether, and you'd have an objective to reach each stepping stone, if you like, which would offer you a benchmark on how things are going, and if everything is working as it ought to be, then you maybe have a meeting at that stage and then you move on.
Q. As the lead engineer would you expect the people working under you to communicate to you all of the information that they had recorded about the stuff they are working on?

Page 45

A. Yes. At least all the relevant information, sure. In other words anything that related to functional operation which was critical, if you like.
Q. So if somebody working under you was testing a prototype or a product, you'd expect to get all the reports that they generated about that testing?
A. Yes, or I'd go and look at it myself.
Q. Would your standards for evaluating written work product be any different when you are dealing with an outside consultant that's not within your own company?
A. No. It would be the same, I think.
Q. You'd expect the outside people to adhere to the same standards --
A. Yes.
Q. -- of your own company?
A. Absolutely.
Q. You'd communicate those standards to them?
A. When you say a standard, there really isn't any standard per se of engineering effort, if you like. There are engineering standards involved in design and drawing and symbols and all that stuff. That's a standard, but as far as how you organize your work, how you do your work on a day-to-day basis is

usually up to the lead engineer or whatever, you know.
Q. If you had hired an outside company to do some testing of a product or prototype, would you expect to have the opportunity to speak to them directly about their results?
A. Absolutely. You would work with them on a day-to-day basis, even to go over there to visit with them. Absolutely.
Q. So would it be enough to get from them just a written report or a compilation of data or would you need to be able to interact?
A. You'd have to interact, yes.
Q. Why is that so important?
A. Well, if you've got a product that you are developing and you are responsible for making it work, whatever it is, then you want to make sure that the vendor or consultant is in line with what you are thinking.
Q. And if they say they've done a test, would you take their word for it --
A. No, I wouldn't.
Q. -- that it's the right test or would you --
A. No. I would visit with them. We'd have a meeting.

We'd have a look at how they are doing the testing.
Q. Okay. Now, I'd like to grab a --
MR. SCHLITZ: We've gone for an hour. If you want to go for more, I don't want to go for more than another ten minutes, so if you want it take a break now or you want to --
MR. RADER: Let's take a short break. That's fine.
(Recess.)
(Exhibit 5, Cartridge marked for identification.)
BY MR. RADER:
Q. Mr. Taylor, we've marked a cartridge as Exhibit 5, and that's a single cartridge; is that correct?
A. Yes.
Q. When you worked on this case you had a chance to study those?
A. Yes.
Q. Can you describe in your own words how that cartridge works in its normal operation?
A. Yes. The blank at the bottom of the hole on, if you like, the top side is pushed into the cartridge. Water is introduced, runs along the channels on the inside and then into the coffee bed. Water runs up

through the coffee bed, up through the filter into the chamber which is up above the filter and then up and over into the outlet which is on the opposite end. That's it basically. It's a simple operation.
Q. Okay. I'll just try to break it down a little bit. When the cartridge goes into the machine, is it foil up or foil down?
A. Foil down.
Q. And there is a beveled inlet at the part that goes into the machine first; is that right?
A. I've never looked at the singles machine, but I assume it enters in this way.
Q. And so on one end of the singles cartridge there is -- it's square, and on the other end it's got like a point to it?
A. Yes.
Q. And on that end with a point there is a beveled inlet in the hard plastic case?
A. Yes.
Q. And that's where you are saying the water inlet device punctures through?
A. Yes. It pushes out the blank at the bottom of the hole.
Q. Did you look at some -- just as an aside, did you

look at some cartridges -- some singles cartridges that didn't have that blank there?
A. Yes, they just have a hole.
Q. So in that case the inlet device just goes right into the hole without having to punch out a blank?
A. Right.
Q. It then introduces the water through that hole into a manifold; is that correct?
A. Yes.
Q. And then the water feeds through the slots in the manifold into the coffee bed?
A. Yes.
Q. And then the resulting liquid goes through -- in the orientation when it's brewing it goes up through the filter?
A. Right, that's correct.
Q. And it travels through a slot over to the outlet; is that correct?
A. That's correct.
Q. And then it goes down through the outlet?
A. Yes, that's correct.
Q. And then in the machine there is a piercing device that pierces the foil that covers the outlet?
A. Yes.

Page 98

A. Yes.
Q. You still have the cartridge in front of you?
A. Yes, somewhere. Yep.
Q. Do you have a pen in your pocket if I ask you in a moment to simulate what it looked like?
A. Yeah.
Q. Can you describe in your own words what it was that you did?
A. Yes. I mean the only objective was to meet what is in the claim, and that is to provide an inflow of hot water, to run it through and make a beverage out of it -- out through the outlet, obviously, which is what I did because that's all that's in the claims. There is nothing more there.
Q. So where did you pierce the foil to make an inlet?
A. Well, the inlet was in this area here.
Q. So it was sort of in the middle of the coffee bed?
A. The bottom, yeah, in the bottom half of the coffee bed.
Q. So closer to the outlet nozzle than to the nose of the cartridge?
A. Sure, because we had -- yeah, we had some vertical and some over this way too.
Q. Who is the "we"?

Page 99

A. Well, I and my wife were messing around with them in the kitchen.
Q. Okay.
A. It's what we did basically.
Q. So she helped you hold them or something?
A. Yeah, because it's hot water, so --
Q. So one of you -- your wife held the cartridge and you injected it?
A. Yes.
Q. How many cartridges did you test that way?
A. I had about three or four of them.
Q. And you tested each one once?
A. Yes. I only had a limited number, so yes.
Q. So did you pierce all of them in pretty much the same place?
A. I think I had one here, another one was maybe halfway up perhaps, and then the outlet I opened up with a pen just to open it up.
Q. And did you collect the outflow in a cup or something?
A. Yes, in a cup.
Q. What did you use to pierce the cartridge?
A. The cartridge, it was a hypodermic I used.
Q. Hypodermic needle?

Page 100

A. A needle, sure. Much like you would have on any disposable hypodermic.
Q. And so was that actuated with your thumb or something?
A. Yes, it was hand operated.
Q. How much volume did it hold?
A. It was enough to fill up the cartridge.
Q. To fill up the coffee bed?
A. The coffee bed, sorry. Yes.
Q. Do you know what the volume was?
A. No, not specifically. I just poured enough in there so it would squirt out the outlet.
Q. And so how far in did you press the tip of the needle?
A. It was maybe halfway into the coffee bed.
Q. And then you used your thumb to squeeze it down?
A. Yes.
Q. And were you regulating the pressure that you used on your thumb?
A. No. I just squeezed it in.
Q. And how long did it take you to squeeze in the full -- did you do the full -- let me start with this: Did you put the full hypodermic worth of water in there?

Page 101

A. Yes, I did. I emptied it out.
Q. You don't know what that volume was but it was the whole thing?
A. It was the whole thing. I mean it filled the chamber in there. It was big enough to fill it.
Q. How do you know that it filled the chamber?
A. Because it squirted out the outlet, otherwise it wouldn't have come out.
Q. So it fully saturated the coffee bed?
A. You have to have enough in there in order to go up and over, otherwise it won't go up and over and out of the outlet.
Q. I see. And how much force did you apply to the hypodermic?
A. Just a normal force that you would normally if you injecting yourself with, you know, if you had to have insulin and you were shoving it into yourself, just the normal hand force.
Q. And do you know how to quantify that for us?
A. A pound or two, probably. It wasn't much.
Q. And did it pressurize the coffee bed at all?
A. Most probably not.
Q. In normal use when you brew a cup of coffee, for example, in a singles machine it pressurizes the

Page 106

A. Yeah, it's a disposable.
Q. You said you tested three or four cartridges?
A. Yes. I didn't have many.
Q. In what orientations did you have them?
A. I had one upside down in the normal route. I had another one like this as in the test I had at Kraft.
Q. How many did you do in each of those positions?
A. Two of each probably.
Q. And did you take contemporaneous notes of what you were doing?
A. No. All I just -- all I wanted was a demonstration. I was putting hot -- I put in hot water through and the beverage I was having out of the other end was brown, so it was obviously absorbing coffee. That's all I have to do because that's all that's in the claim.
Q. Did you see any water exiting through the hole where you had pierced?
A. No, it wasn't in fact.
Q. In any of your experiments?
A. No.
Q. To your knowledge you didn't actually pressurize the chamber, though?
A. No. I mean I didn't because it's not mentioned in

Page 107

the claim at all.
Q. How long did it take you to do the testing that you did?
A. Couple of minutes.
Q. Couple of minutes?
A. Yeah.
Q. How long did it take you to sort of design in your mind what the testing was going to look like?
A. It was also minutes.
Q. How did you secure the cartridge? Was it your wife holding it?
A. Yes.
Q. How much liquid did you get out of the outlet?
A. Well, it was the excess of the amount of -- over the amount that was left in the chamber obviously, but it wasn't a huge amount because I wasn't aiming at any specific volume.
Q. So you didn't measure the volume?
A. No, I didn't measure it because it wasn't necessary.
Q. Was it a couple of teaspoons?
A. Yeah, probably.
Q. Did you taste the liquid?
A. No, I don't have to because it's not in the claim.
Q. Did you smell the liquid?

Page 108

A. Yeah, a little bit, and it had a coffee smell.
Q. What temperature was the water that you injected?
A. It was hot. It was out of a kettle actually, so it was as much as I could hold in the syringe because I didn't have any insulation.
Q. Do you know what the temperature was?
A. No, I don't. It would have been somewhere in between -- well, it might have been around 150 F maybe.
Q. 150 degrees Farenheit?
A. F, right.
Q. Did you take any photos of the test?
A. No, I didn't.
Q. What did you do with the cartridges when you were done?
A. I threw them out.
Q. Then what did you do with the liquid?
A. Also dumped it.
Q. Did you take any notes on your observations of the test?
A. No. Only what is in the report.
Q. And how far in advance of preparing the report did you do the test?
A. A week, a week or two probably.

Page 109

Q. Now, it says in the footnote in your report that you did the hypodermic needle test on a Lambert-type cartridge with the open inlet?
A. Right.
Q. That was one of the three or four that you did?
A. Yes.
Q. What orientation did you do that one?
A. One that was in the vertical because it's open. I mean actually that was the one I had to have inverted. I could have put something over the hole, but I didn't.
Q. So you did that one vertically with the open hole toward the top?
A. Upright, yeah.
Q. What would normally be the inlet hole?
A. Yes, right.
Q. And you did that in order to avoid leakage out the hole?
A. Yes, because obviously it would leak if I laid it in any other way.
Q. If you had pressurized it, would it have leaked notwithstanding that the hole was at the top?
A. Well, of course, yes.
Q. Was the hypodermic needle normal to the surface of

Page 114

Q. Kraft engineers?
A. Yes, right.
Q. Actually before I get to that, let me just ask you one more question. Did you try to -- aside from testing the singles cartridges, did you try to create a test product or prototype based on either the '234 Patent or the '130 Patent that you offered opinions on?
A. With the water you mean?
Q. Did you actually build what was shown in those patents?
A. No, I didn't.
Q. Okay. So your opinions on those are strictly based on what's written?
A. On the drawings, what's actually written, yes, right.
Q. Now, on pages 8 and 9 of your report you also talk about some tests that were done by engineers at Kraft; is that right?
A. Yes.
Q. Were you present when any of those tests were performed?
A. No, I was not.
Q. Have you spoken with Mr. Bentley or Mr. Rowan or any

Page 115

other Kraft engineer about those tests?
A. No, I did not.
Q. How did you find out about those tests?
A. I had the information from my counsel.
Q. What information was that?
A. There was a drawing of the test and the results of the test and the depositions obviously of Rowan and whoever else, Andrew Bentley, right.
Q. Now, you understand that they both used a test rig?
A. Yeah, I understand that.
Q. Have you seen that rig?
A. No. Only in picture form.
Q. Have you seen pictures of it?
A. Well, only what was in the picture with the device in there as well.
Q. Let's grab those pages. I have a document that's previously been marked as I believe Exhibit 13. I can't read the handwriting exactly. Then I have Exhibit 91.
A. Uh-huh.
Q. Then I have Exhibit 202.
A. This is all I had.
Q. So you've got Exhibits 13, 91 and 202 in front of you. You said that this is all you had?

Page 116

A. Yes.
Q. You didn't have any other pictures of the rig or anything like that?
A. No. This is what I remember.
Q. So what is your understanding of what's shown in Exhibit 13?
A. Well, 13 is just a volume of liquid. That's all that's indicated from different cavities of the housings, I assume, but that's how I took it to read.
Q. So what is the -- it says "mold number" on the upper left and then "cavity number." What do those numbers refer to?
A. Mold would be a mold for making the housings and because its multi-cavity-type mold, it's really a means of identifying the cartridge itself, the housing anyway.
Q. And what's the significance of that information on this chart?
A. Well, it's just the amount of Mls that he took out, that he was able to get out or at least the repeatability, I guess. That's all I can get out of it.
Q. In other words why are the mold and cavity numbers

Page 117

listed here? What does that add to this table?
A. I'm not sure, to be honest.
Q. Okay.
A. You know, I understand there were issues, not really issues, but there were questions about alterations and molds over the years and all the rest of it, and I took it that it was part of that.
Q. But as you sit here today you don't know specifically why that stuff is listed on this page?
A. No. There is not a lot of meaning there because it merely indicates a mold number and cavity number or date or at least a month anyway with a volume in CCs. There is no other data there.
Q. So the month and manufacturer, what does that refer to?
A. I assume of the cartridge with the coffee in it.
Q. And there are some Decembers and Novembers, but do you know what years those were?
A. No, I don't.
Q. Do you know whether these were the cartridges with the open hole or the closed holes?
A. There is no identification.
Q. Do you know whether these were singles cartridges or T-discs?

Page 118

A. These are singles. I was aware of that.
Q. Okay. And then on the right-hand column, the Mls, what does that refer to?
A. I assume it's the amount of coffee which they were able or liquid or whatever that they were able to extract out of the rig that they had.
Q. Is it the input or the output?
A. No. It's output, I think, but they are all within a small amount of each other, so it's insignificant in my mind. They are all essentially the same.
Q. Who created this document?
A. This I believe was Andrew Bentley, I think.
Q. What tests did he do to create this document?
A. He had the one which is shown on Exhibit 91.
Q. So he used the device that's shown in Exhibit 91?
A. I assumed, yes.
Q. You say you assumed. Do you know one way or another whether it was that device or a different device that led to the results in Exhibit 13?
A. No, because I can't remember, to be honest. I've read such a lot of data and depositions, I can't remember to be honest.
Q. Okay. So it could have been a different device that led to these results?

Page 119

A. It may well have been. I'm just assuming because I don't remember.
Q. Okay. Do you know if these were coffee cartridges or tea cartridges?
A. I believe they were coffee cartridges, I think, from what I remember.
Q. Do you remember what type of cartridges?
A. They were -- I think they used Lambert and Rychiger type of cartridges.
Q. And that's for the results in Exhibit 13?
A. Yes, and also maybe on 202. Is that what it is? Yeah.
Q. And do you know what type of coffee was in the cartridges that were used to get the results in Exhibit 13?
A. Only what's on the paper. There is a brand there on 202 which they talk about.
Q. I see. Now Exhibit 202, is that recording information about the same tests as Exhibit 13?
A. I'm assuming it is at this stage because I don't remember as I say.
Q. Okay.
A. Because on this particular one he's also talking about drink volume.

Page 120

Q. I see. Now, in the tests shown in Exhibit 13 do you know were those made -- were those results through same-side piercing or opposite-side piercing?
A. I think they were on the same-side piercing.
Q. And how was the cartridge oriented in the tests?
A. It was vertical.
Q. And where was the inlet piercing made in the test for Exhibit 13?
A. It was in a number of locations. It's on the drawing here, A, B, C, D, E, I think.
Q. So you are referring to the picture in Exhibit 91?
A. On 91, sorry, yes.
Q. So in the tests that led to Exhibit 13, all the various inlet positions were used that are shown in Exhibit 91?
A. I assume so. They were all in the vertical in this test, I think.
Q. But in terms of which inlet position was used for each of the tests shown in Exhibit 13, do you know which one or ones it was?
A. Well, they have them on that page actually. It indicates on the -- above the drawing.
Q. I see. So that the tests that are listed in the table on Exhibit 91 are the same tests that are

Page 121

listed in the table on Exhibit 13?
A. That's what I'm assuming, yeah, because I didn't have any other information. I mean I had this one obviously which is over the picture which they had.
Q. Okay.
A. It's obviously measuring the volume out of the different positions or -- well, yeah, the positions of the -- where the inlet was pierced, and they are all in essence the same.
Q. Okay.
A. The difference is insignificant anyway.
Q. Now, to your knowledge did Mr. Bentley taste any of the liquids that he produced with the rig?
A. He did not, I don't think, from what I remember.
Q. Do you know if anyone else at Kraft, Mr. Rowan or Mr. MacMahon, tasted any of it?
A. I don't believe so.
Q. Now, can you just describe in your own words how the rig that they used functioned?
A. The way I understand it is they had a clamp on the back or plate, if you like, on the back of the cartridge and then another one over the front of it with some holes in it which would indicate the positions of the inlet pierces, if you like, and

there was a rubber gasket in between the plate on the outside and against the cartridge, so there was a gasket which would eliminate leakage and in between the outer plate with the holes in the cartridge itself, and then it was tightened up by finger load -- finger tensioning, if you like.
Q. What do you mean by "finger tensioning"?
A. Well, to tighten up the wing nuts.
Q. And where was the hot water coming from?
A. It was a tube which was introduced in through the rubber which was sandwiched, if you like, in between the outer plate and the cartridge itself.
Q. And what was feeding that tube?
A. There would be water from the supply, hot water.
Q. Do you know what type of supply it was?
A. No, I have no recollection other than it was hot water. That's all I remember.
Q. Do you know at what pressure the water was fed in?
A. No, I don't.
Q. And then how was the water -- how did the water exit the cartridge?
A. Out through the outlet which is on the other side in this case.
Q. What did the piercers for the inlet and the outlet

look like?
A. The piercers, I believe they had used the ones which they use on the existing or off one of the existing piercers on the brewer or one of the brewers where I think on the inlets they had a serrated tube ending which allowed them to pierce, but it made a rather ragged entry hole. I don't think it's what I would have used, but that's all right.
Q. So for both the inlet and the outlet they had this serrated item?
A. The inlet was a little different, I think. They had one which they use on all the outlets, I think, which is where they cut around most of the periphery with a serrated edge and then they pull it over to one side.
Q. I'm sorry. That's for the inlet or the outlet?
A. That's the outlet, sorry.
Q. So for the outlet they use the same jagged outlet piercers that they used in the singles machine?
A. It was different. It was the one they usually use on the outlet, and I think the inlet one -- I don't know. They might have been the same. I'm not sure because I didn't see any indication exactly. I was only looking at the marks in and around the hole.

Q. I'm sorry. What marks around the hole?
A. I had seen somewhere -- it was a drawing, I think. No. It was a picture, and it showed an inlet hole in through the foil and it was a little jagged. It's a little bit like the outlet piercer which they use on the Tassimo, I think.
Q. Was it taken from the Tassimo?
A. I don't know. I'm not sure if it was. I assumed it was, but I don't know.
Q. And with regard to the outlet piercer, was that taken from any machine?
A. It may well have been, but I'm not sure again.
Q. And who actually made the test rig?
A. I believe it was a mix of Bentley and Rowan, Andrew Bentley and Lee Rowan. One of them or the technician who was working with them arrived at a test rig, I guess.
Q. So it is a combined effort --
A. I think so from what I read, yes.
Q. -- between Rowan and Bentley and the technician?
A. Yeah, that's what I assumed.
Q. You mentioned a rubber pad?
A. Yeah. I named it a gasket because that's what it is.

Q. Where was that located?
A. In between the front of the -- it was up against the front of the lid, the foil lid, and under a plate which went on top of it.
Q. Okay.
A. So it was compressed basically to some degree anyway.
Q. So that it was pressing against the foil side of the cartridge?
A. Yes.
Q. And it was forming a seal around the edge wall of the cartridge?
A. It would form around the periphery of the cartridge, yes, and depending on how they went in with the piercer itself, I assume they had a pretty good seal between the piercer and the rubber gasket.
Q. Do you know enough about the details of that?
A. No, I don't. I really don't because I didn't see it.
Q. So you don't --
A. I'm just looking at what I read.
Q. So you don't know whether that seal formed right around the needle or not?
A. No, I don't know. I don't know the detail of that.

EXHIBIT 11

THIS EXHIBIT HAS BEEN REDACTED IN ITS ENTIRETY